IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 988 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
BALVANSINH SOMSING RATHOD - Opponent(s)

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Appearance :
MR HL JANI Ld. APP for Appellant(s) : 1,
MR AD DESAI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/10/2007

ORAL JUDGMENT

1. By way of this appeal, the State has challenged the judgment and order dated 27.5.1994 passed by the learned Judicial Magistrate First Class, Dabhoi,

Dist. Baroda, whereby, the respondent – accused has been acquitted for the offence punishable under sec. 409 of IPC.

2. The facts of the prosecution case is that the respondent while working as Talati-cum-Mantri during the year 1981 has not credited an amount of Rs. 1500/- and cash of Rs. 115.35 & Rs. 94.42ps of Limpura Panchayat, respectively, and in all, Rs. 1709.95ps was not handed over to other Talati-cum-Mantri and, therefore, the complaint was lodged under sec. 409 of IPC. After the investigation was over, the charge-sheet was filed. The accused has not pleaded guilty and, thereafter the prosecution has examined the following witnesses.

1. PW-1 Naranbhai Shivshankar Dave Ex. 6
2. PW-2 Raheman Chhitubhai Ex 75
3. PW-3 Nagjibava Jesingbava Ex. 76
4. PW-4 Vajesinh Hamirsinh Ex. 77
5. PW-5 Kubersinh Bhayajibava Parmar Ex. 78
6. PW-6 Amarsinh KoyajiRathva, Talati-cum-Mantri Ex. 84
7. PW-7Dilip Narpatsinh Chhasatiya Talati-cum-Mantri Ex. 85
8. PW-8 Ramjibhai Raghunathbhai Patel, Ex. 89
9. PW-9 Balram Naranbhai Ex. 99
10. PW-10 Babarbhai Dalsukhbhai Ex. 127
11. PW-11 Mahendrasinh Amarsinh Gohil, PSI, Ex. 135

3. The prosecution has also produced documentary evidence on the record of the case from Ex. 7 to 10, 12, 13, 79, 80 to 83, 90 to 97, 99 to 101, 129, 131, 132 & 134. After considering the evidence on record of the case, the trial court has acquitted the respondent.

4. Before proceeding with the matter, it is pertinent to note that the incident is of 1981. The respondent has already retired from service and in view of the decision of the Supreme Court reported in **AIR 1999 SC 1507** no fruitful purpose will be served by remanding the matter back after 26 years, therefore, learned counsel for the respondent has requested that the acquittal may not be disturbed. However, finding of the trial court is not in consonance with the evidence and looking to the amount of Rs. 1709.95, it will not be proper to remand the matter after 26 years.

5. In view of the above, this appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial court concerned forthwith.

(K.S. JHAVERI, J.)

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